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102D CONGRESS
1st Session

SENATE

REPORT
102-183

BUREAU OF LAND MANAGEMENT FOUNDATION ACT

OCTOBER 8 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1117]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1117) to establish the Bureau of Land Management Foundation, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 1, line 10, strike "Columbia." and insert in lieu thereof "Columbia, which shall not be an agency or establishment of the United States.".

2. On page 2, after line 17, insert the following new subsection:

> (c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.
>
> (2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—
>
> (A) the financial interests of a director, officer, or employee; or
>
> (B) the interests of any corporation, partnership, entity, or organization in which such director, officer, or employee—
>
> (i) is an officer, director, or trustee; or
>
> (ii) has any direct or indirect financial interest.

3. On page 2, line 24, strike "knowledgeable regarding" and insert in lieu thereof, "educated or have actual experience in".

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4. On page 8, lines 9 through 14, strike subsection (a) in its entirety, and insert in lieu thereof the following:

(a) START-UP FUNDS.—The Secretary is authorized to provide funding to the Foundation for purposes of assisting the Foundation in establishing an office and meeting initial and other start-up expenses.

5. On page 10, lines 4 through 14, strike section 10 in its entirety and insert in lieu thereof the following:

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section 5(a) of this Act, there are authorized to be appropriated such sums not to exceed $500,000 per year for the two years following the date of enactment of this Act.

(b) MATCHING FUNDS.—For the purposes of section 5(b) of this Act, there are authorized to be appropriated such sums not to exceed $1,000,000 for the five years following the date of enactment of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 1117, as ordered reported, is to establish the Bureau of Land Management Foundation as a charitable and nonprofit corporation to further the purposes of the Bureau of Land Management.

BACKGROUND AND NEED

Congressionally chartered foundations to accept private gifts and donations, and to further the purposes of a specific agency, have been established for the National Park Service, the Fish and Wildlife Service and most recently, the Forest Service. S. 1117 would establish a similar foundation for the Bureau of Land Management. The Foundation would consist of a governing Board of Directors, consisting of 15 members and the Director of the BLM, serving in an ex officio capacity. The Foundation would be authorized to accept gifts in connection with the services and activities of the BLM, conduct activities that further the purposes of the BLM, encourage and support activities that support the programs and functions of the BLM, and promote cooperation between the BLM and the private sector.

LEGISLATIVE HISTORY

S. 1117 was introduced by Senator Bingaman on May 21, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on June 20, 1991.

At the business meeting on September 25, 1991, the Committee on Energy and Natural Resources ordered S. 1117, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 25, 1991, by a unanimous vote of a

quorum present, recommends that the Senate pass S. 1117, if amended as described herein.

The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers*	
Mr. Ford*	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad	
Mr. Akaka	
Mr. Fowler*	
Mr. Shelby*	
Mr. Wellstone	
Mr. Wallop	
Mr. Hatfield	
Mr. Domenici	
Mr. Murkowski*	
Mr. Nickles*	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn*	

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 1117, the Committee adopted five clarifying amendments. Amendment 1 clarifies that the Foundation is not an agency or establishment of the U.S. Government.

Amendment 2 sets forth conflict of interest provisions for directors and employees of the Foundation. These provisions are identical with the conflict of interest provisions contained in the legislation establishing the National Forest Foundation.

Amendment 3 clarifies the appointment criteria for directors of the Foundation.

Amendment 4 is a conforming amendment.

Amendment 5 authorizes $500,000 in start-up funds for the Foundation for each of the first 2 years after the date of enactment of this Act. The amendment also authorizes up to $1 million in matching funds over the 5-year period following the date of enactment of this Act.

These amendments are consistent with recommendations made by the Bureau of Land Management at the hearing on S. 1117.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the "Bureau of Land Management Foundation Act".

Section 2(a) establishes the Bureau of Land Management Foundation (the "Foundation") as a charitable and nonprofit corporation in the District of Columbia.

Subsection (b) sets forth the purposes of the Foundation as (1) encouraging, accepting and administering gifts of money and real and personal property for BLM; (2) undertaking and conducting activities that further the purposes of BLM; (3) undertaking and encouraging educational, technical, and other activities that support the programs and functions administered by BLM; and (4) promoting cooperation among BLM, the private sector, and other governmental and educational agencies and institutions.

Subsection (c) provides that the Foundation shall not participate or intervene in a political campaign, nor shall a director, officer, or employee of the Foundation participate in the consideration of any issue before the Foundation if such person has a conflict of interest.

Section 3(a) establishes a Board of Directors (the "Board") consisting of fifteen members, all of whom must be United States citizens. A majority of the members shall be educated or have actual experience in natural or cultural resource management, law, or research, and to the extent practical, should represent diverse points of view on public land management and natural and cultural resource issues. The Director of BLM shall be an ex officio, nonvoting member of the Board.

Subsection (b) sets forth the terms of appointment of Board members by the Secretary of the Interior. Board members are to be appointed for terms of 6 years, except that the initial appointments are to be for 2, 4, and 6 years, respectively.

Subsection (c) provides for election of the Chairman by the Board for a 2-year term.

Subsection (d) defines a quorum for the Board.

Subsection (e) provides for annual meetings and removal of a Director for absenteeism.

Subsection (f) provides for reimbursement of expenses to Board members. Members are to serve without pay, but are entitled to per diem expenses while on official business.

Subsection (g) describes the general powers of the Board.

Paragraph (h)(1) prohibits the appointment of officers and employees until the Foundation has sufficient funds to pay for their services. Employee salaries are capped at level IV of the Executive Schedule for Federal employees.

Paragraph (h)(2) provides for the appointment of a Chief Executive Officer of the Foundation.

Section 4 describes the general corporate powers and obligations of the Foundation. Subsection (a) provides that the Foundation shall have perpetual succession, may conduct business throughout the United States and in foreign countries, and shall have its principal offices in Washington, DC.

Subsection (b) pertains to the service of notice or process upon the Foundation.

Subsection (c) provides that the Foundation shall have an official seal which shall be judicially noticed.

Subsection (d) sets forth the powers of the Foundation. The Foundation is entitled to accept and use any gift, devise, or bequest, borrow money and issue bonds, sue and be sued, enter into contacts, lease office space, and conduct any other acts necessary to carry out the purposes of the Foundation.

Subsection (e) provides that the Foundation is authorized to acquire, hold, and dispose of real property or interests therein.

Section 5(a) authorizes the Secretary to provide the Foundation with start-up funds.

Subsection (b) authorizes the Secretary to provide matching funds for administrative expenses incurred by the Foundation for a 5-year period following the date of enactment of this Act.

Subsection (c) provides for the Secretary to make Department of the Interior personnel, facilities, and equipment available for use by the Foundation.

Section 6 provides that the Secretary may accept the services of any director, officer, employee, or agent of the Foundation on a volunteer basis.

Section 7 provides for audits and annual reports to Congress.

Section 8 releases the United States from liability for debts, defaults, acts or omissions of the Foundation. The section specifically provides that the full faith and credit of the United States shall not extend to any obligations incurred by the Foundation.

Section 9 reserves Congress' right to repeal or amend this Act.

Section 10 authorizes the appropriation of start-up funds totaling $1 million for the first two years following the date of enactment of this Act, and $1 million in matching funds over the 5-year period following the date of enactment of this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1991.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1117, the Bureau of Land Management Foundation Act, as ordered reported on September 25, 1991.

Enactment of S. 1117 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1117.
2. Bill title: The Bureau of Land Management Foundation Act.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources on September 25, 1991.

4. Bill purpose: S. 1117 would establish the Bureau of Land Management Foundation as a charitable, nonprofit, private corporation that would encourage and use private gifts of money and property for the benefit of the Bureau of Land Management. The Department of the Interior would be required to appoint a board of directors and provide financial assistance to the foundation. The bill would authorize the appropriation of $500,000 annually for two years for start-up expenses and $1 million over five years to match other administrative expenses incurred by the foundation.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Authorization level	0.7	0.7	0.2	0.2	0.2
Estimated outlays	.7	.7	.2	.2	.2

The costs of this bill fall within budget function 300.

Basis of estimate: For the purposes of preparing this estimate, CBO assumed that S. 1117 would be enacted and that the full amounts authorized would be appropriated beginning in fiscal year 1992. Outlays were estimated based on historical outlay rates for similar programs.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of S. 1117 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Theresa Gullo.

11. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis .

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1117. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1117, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 6, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1117. These reports had not been received at the time the report on S. 1117 was filed.

When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF CY JAMISON, DIRECTOR, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to comment on S. 1117, the proposed "Bureau of Land Management Foundation Act."

The Department supports the concept embodied in S. 1117, but has concerns about certain sections on the bill. The Department is developing legislation that shares the intent of S. 1117 while avoiding its problems. We intend to coordinate this proposal within the Administration and submit it to the Congress as soon as possible.

The concerns we have identified include the following:

S. 1117 does not clearly establish a private foundation absent government influence. (Justice advises that the bill's current structure raises Constitutional concern.)

Section 2 would designate the Foundation as the Bureau of Land Management Foundation. As an example of the need to clearly define this as a private non-governmental Foundation, we would suggest that it be called the "National Resource Lands Foundation".

S. 1117 fails to include provisions preventing board members and employees from participating in determinations of questions in which they have financial interest. This raises a number of conflict of interest and other ethics questions.

We strongly oppose the provisions in section 5 for funding and the provisions in section 10 which authorize that funding. The Foundation can and should be self-supporting.

We oppose the authorization given to the Foundation in section 4(d)(4) to borrow money and issue bonds, debentures or other debt instruments.

In establishing a Board of Directors, S. 1117 makes no provision for inclusion of persons experienced in public land management and their resources. Section 3(a) includes specifically only persons "knowledgeable regarding natural or cultural resource management, law, or research."

I will be pleased to answer questions.

1. Page 1, title, and lines 4, 5, 7 and 8, delete "Bureau of Land Management" and insert in its stead "National Resource Lands".

2. Page 1, line 10, delete the period at the end of the sentence, insert a comma in its place, and add "which shall not be an agency or establishment of the United States." Delete from page 9, lines 24 and 25 the second sentence of section 8.

3. Page 2, line 17, add a new subsection (c) to section 2, to read:

"(c) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

"(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation concerning a particular matter involving a specific party or parties affecting:

"(A) the financial interests of such director, officer, or employee; or

"(B) the interests of any corporation, partnership, entity, or organization in which such director, officer, or employee

"(i) is an officer, director, or trustee; or

"(ii) has any direct or indirect financial interest other than receiving compensation from the federal government for services performed for the federal government."

4. Page 2, lines 24 and 25, delete the text starting with the word "knowledgeable" and ending with the word "research" and insert in its place "educated in or have actual experience in matters pertaining to the public lands and their resources."

5. Page 5, line 3, before the period after the word "services" insert the words "through donation or appropriation under section 10."

6. Page 5, between lines 11 and 12, add a new paragraph (e) to read:

> Any actions taken by the Director on behalf of the Foundation will be considered actions taken on behalf of the United States: Provided, That in this capacity as a non-voting member of the Board, the Director shall not represent the Foundation in any activity that involves political action or legislation relating to the Bureau.

7. Page 6, lines 24 and 25, delete all the text after "money" and insert a semicolon after "money".

8. Page 7, line 17 between the words "include" and "mineral", insert the phrase, "but not be limited to,".

9. Page 8, lines 9 through 14, delete in their entirety and insert in their stead:

> The Secretary may provide Department of the Interior personnel, facilities, equipment, and other administrative services to the Foundation, including reimbursement of travel and subsistence expenses under section 3, not to exceed then current Federal Government per diem rates, for a period of up to 3 years from the date of enactment of this Act, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

10. Page 8, lines 15 through 22, delete in their entirety, and line 23, change "(c)" to "(b)".

11. Page 9, lines 4 through 7, delete in their entirety and insert instead:

> The Secretary may accept without regard to the civil service classification or conflict of interest laws, rules, and regulations, any officer, director, employee or agent of the Foundation, without compensation from the Department of the Interior, as a volunteer in the performance of the functions authorized herein, in the manner provided for under section 307 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1737).

12. Page 9, insert the following after line 19 and before line 20:

> (c) If the Foundation engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purposes as set forth in section 2(b) or refuses, fails, or neglects to discharge its obligations under this Act, or threatens to do so, the Attorney General of the United States may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

13. Page 10, after line 3, and before line 4, insert:

> Sec. 10. The activities of the Foundation authorized under this Act shall be supplemental to and shall not preempt any authority or responsibility of the Secretary or the Bureau under any provision of law.

14. Page 10, lines 4 through 14, delete in their entirety and insert in their stead:

> Sec. 1. Authorization of Appropriations. There are hereby authorized to be appropriated such sums as may be necessary, not to exceed $500,000 per year, to carry out the purposes of this Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1117, as ordered reported.

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